

Exeter West Luxury Condominiums

v.

Town of Exeter

Docket Nos.: 9677-90 thru 9698-90, 10036-90 and 11732-91PT thru 11755-91PT

DECISION

This decision pertains to twenty-four (24) 1990 and 1991 appeals filed on twenty-four (24) condominium units (the Units) at Exeter West Luxury Condominiums (Exeter West) each unit consists of two bedrooms and one full bath and range from 1,020 to 1,080 square feet. The following list summarizes the units and assessments under appeal.

<u>TAXPAYER</u>	<u>DOCKET #</u> 1990	<u>DOCKET #</u> 1991	<u>UNIT #</u>	<u>ASSESSMENT</u>
Myrna McLane Michael Siegal * Michael Siegal	8677-90	11732-91PT	804-84-1	\$92,800
Raymond & Jeanette Coombs	9679-90	11733-91PT	804-84-2	\$92,800
Louis & Marie Angelo * Susan Normandy	9680-90	11734-91PT	804-84-3	\$94,000
Linda Wadlin and Carl Hampe	9681-90	11735-91PT	804-84-4	\$94,000
Carl N., Carl F. and John Bletzer	9682-90	11736-91PT	804-84-5	\$94,000
Thomas & Ann Higgins	9683-90	11737-91PT	804-84-6	\$94,000
Melvin Zimelman	9684-90	11738-91PT	804-84-7	\$92,800

Louis & Marie Angelo	9680-90	11739-91PT	804-84-8	\$92,800
Myrna McLane	9678-90	11740-91PT	804-84-9	\$92,800
Kenneth & Mary McGillivray	9685-90	11741-91PT	804-84-10	\$92,800
Robert J. Mannix	9686-90	11742-91PT	804-84-11	\$94,000
Kenneth & Sabrina Barratt	9687-90	11743-91PT	804-84-12	\$94,000
Melissa Shane and Jane Foley	9688-90	11744-91PT	804-84-13	\$94,000
Jay S. Kamen *Karl E. Bilodeau & Kimberly Odrino	9689-90	11745-91PT	804-84-14	\$94,000
John & Anne Carroll	9690-90	11746-91PT	804-84-15	\$92,800
John Torrisi and Bradley Torrisi	9691-90	11747-91PT	804-84-16	\$92,800
Mark and Harris Harrington	9692-90	11748-91PT	804-84-17	\$92,800
Pamela Brooks	9693-90	11749-91PT	804-84-18	\$92,800
David & Thomas Alamo	9694-90	11750-91PT	804-84-19	\$94,000
Mark & Gwenyth Oien	9695-90	11751-91PT	804-84-20	\$94,000
Mark & Lynn Foley	9696-90	11752-91PT	804-84-21	\$94,000
Ellyn & Paul Burke	9697-90	11753-91PT	804-84-22	\$94,000
Michael Pouliot	9698-90	11754-91PT	804-84-23	\$92,800
David & Paul Kivikoski	10036- 90	11755-91PT	804-84-24	\$92,800

* Change in ownership during 1990\1991 assessment period.

The parties agreed to consolidate the appeals due to similarity of property and common issues involved. The parties also waived a hearing and agreed to allow the board to decide the appeals on written submittals. The board on its own motion consolidated the 1990 and 1991 appeals. The board has reviewed the written submittals and issues the following decision.

ARGUMENTS

The "Taxpayers'" argued:

1) based on condominium sales, between January, 1989 and September, 1990, at a

comparable property, Exeter Woods Condominium (Exeter Woods) the Units were overassessed compared with the Town's general assessment level (mean 1.20% vs. median 1.04%);

2) based on condominium sales at Exeter Woods, with adjustments for extra bathroom and pool at the comparable, the Units should be assessed at \$72.56/s.f. or \$74,010 for 1,020 s.f units and \$78,365 for 1,080 s.f. units, resulting in the following assessments:

Unit #	1990 Assessment	S/F Area	Revised Assessment Per S/F	Revised Assessment
#1	\$92,800	1,020	72.65	\$74,100
#2	\$92,800	1,020	72.65	\$74,100
#3	\$94,000	1,080	72.65	\$78,500
#4	\$94,000	1,080	72.65	\$78,500
#5	\$94,000	1,080	72.65	\$78,500
#6	\$94,000	1,080	72.65	\$78,500
#7	\$92,800	1,020	72.65	\$74,100
#8	\$92,800	1,020	72.65	\$74,100
#9	\$92,800	1,020	72.65	\$74,100
#10	\$92,800	1,020	72.65	\$74,100
#11	\$94,000	1,080	72.65	\$78,500
#12	\$94,000	1,080	72.65	\$78,500
#13	\$94,000	1,080	72.65	\$78,500
#14	\$94,000	1,080	72.65	\$78,500
#15	\$92,800	1,020	72.65	\$74,100
#16	\$92,800	1,020	72.65	\$74,100
#17	\$92,800	1,020	72.65	\$74,100
#18	\$92,800	1,020	72.65	\$74,100
#19	\$94,000	1,080	72.65	\$78,500
#20	\$94,000	1,080	72.65	\$78,500
#21	\$94,000	1,080	72.65	\$78,500

#22	\$94,000	1,080	72.65	\$78,500
#23	\$92,800	1,020	72.65	\$74,100
#24	\$92,800	1,020	72.65	\$74,100

3) For 1991, the assessed value for all the Units should be reduced to \$52,000 to be in line with the 1991 abated assessments on half the units at the Exeter Woods.

The Town argued the assessments were proper because:

- 1) these Units were assessed proportional to other condominiums and the assessment process only requires proportionality in any given subgroup;
- 2) some complexes may be higher or lower from other comparables, but the values placed should be a fair market value;
- 3) they are within a reasonable range of the other assessments in Town and this was consistent with the board's decision in Andrew v. Gilford; and
- 4) the Taxpayers based their entire appeal on the equalization ratio.

Board Findings

The board finds that for 1990, the 1,020 s.f. units should be assessed at \$74,100 and the 1,080 s.f. units should be assessed at \$78,500. For 1991, the 1,020 s.f. units should be assessed at \$64,800 and the 1,080 s.f. units should be assessed at \$66,000. These assessments are ordered for the following reasons.

- 1) The Town failed to adjust the assessments in accordance with RSA 75:8, which requires municipalities to annually review the market and the assessments and to revise assessments if the market data demonstrates a need to revise the assessments. Relying on the 1986 and 1987 sales does not comport with the RSA 75:8 requirement.
- 2) The Town was incorrect when it asserted uniformity within a class of

properties is all that is required. The law clearly requires the Town to have proportionality both within a property class and throughout the Town. In Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985), the court stated: "It is impermissible to maintain a class of real estate that is assessed at a higher level than other real estate, whether that class consists of one parcel or half the town. It is therefore, irrelevant that all assessments within one such class may be uniform." Similarly, in Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 204 (1899), the court stated: "That the constitutional rule of equality requires a proportional and equal valuation of the different kinds of taxable property. Owners of one kind of property should not pay more or less than their share of the common burden because of the character of their estate. A taxpayer's share is a proportion of the whole tax as to the true value of their property to the true value of all the taxable estate in the city. A taxpayer is required to pay its share and no more, and not to relieve the owners of one class of property at the expense of other property holders."

3) The Town erred in relying upon the board's decision in Andrews v. Gilford because the supreme court reversed the board's decision in Appeals of Andrews, 136 N.H. 61 (1992).

4) The Taxpayers' evidence of sales at Exeter Woods--a very comparable property--demonstrated overassessment.

5) The Taxpayers' evidence of assessments and reductions thereto at Exeter Woods demonstrated overassessment.

6) For 1990, we find the Taxpayers' assessment analysis and conclusion to be the best evidence before the board, resulting in an assessment of \$74,100 for the 1,020 s.f. units and \$78,500 for the 1,080 s.f. units.

7) For 1991, we find the 1,020 s.f. units to have a market value of \$54,000, resulting in a \$64,800 assessment ($\$54,000 \times 1.20$) and the 1,080 s.f. units to

have a \$55,000 market value, resulting in a \$66,000 assessment (\$55,000 x. 1.20).

If the taxes have been paid, the amount paid on the value in excess of \$74,100 for 1,020 s.f. units and \$78,500 for 1,080 s.f. units for the tax year 1990; \$64,800 for 1,020 s.f. units and \$66,000 for 1,080 s.f. units for the tax year 1991 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David C. Stusse, representing Taxpayers; and Chairman, Selectmen of Exeter.

Dated: May 7, 1993

Melanie J. Ekstrom, Deputy Clerk